

## OPEN MEETING AGENDA ITEM

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## BEFORE THE ARIZONA CORPORATION COMMISSION

## COMMISSIONERS

ROBERT “BOB” BURNS, Chairman  
LEA MARQUEZ PETERSON  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON

IN THE MATTER OF THE  
COMMISSION’S INVESTIGATION OF  
THE BILLING AND WATER QUALITY  
ISSUES OF JOHNSON UTILITIES, LLC

No. WS-02987A-18-0050

**REQUEST THAT COMMISSIONER  
DUNN VOLUNTARILY RECUSE  
HIMSELF FROM PARTICIPATION  
OR VOTING REGARDING THE  
PROPOSED ORDER TO BE  
CONSIDERED AT THE JUNE 22,  
2020 SPECIAL OPEN MEETING**

Johnson Utilities, LLC, (“Johnson” or the “Company”) hereby requests that Commissioner Boyd Dunn voluntarily recuse himself from further participation in the vote on the Proposed Order scheduled for the June 22, 2020 Special Open Meeting due to the fact that he has prejudged this matter and he has a conflict of interest.

**I. STANDARD FOR RECUSAL OF A CORPORATION COMMISSIONER**

The quasi-judicial nature of contested proceedings before the Arizona Corporation Commission has been long recognized. *State ex rel. Corbin v. Ariz. Corp. Comm’n*, 143 Ariz. 219, 225, 693 P.2d 362, 368 (App. 1984). Thus, a participant in such a proceeding has a due process right to have an impartial commission decide its case.

1 “We start from the premise that there are certain ‘fundamental’ procedural requisites  
2 which a person is entitled to receive at an administrative hearing which is quasi-judicial in  
3 nature. One is a decision by an *impartial* decision maker.” *Rouse v. Scottsdale Unified*  
4 *School Dist.*, 156 Ariz. 369, 371, 752 P.2d 22, 24 (App. 1987) (emphasis added). This means  
5 that such proceedings “must be attended, not only with every element of fairness but with  
6 the very appearance of complete fairness.” *Horne v. Polk*, 242 Ariz. 226, 234, ¶ 28, 394 P.3d  
651, 659 (2017) (internal quotation marks omitted).

7 Further, the Comment to Rule 4.1, Conflicts of Interest, Arizona Corporation  
8 Commission Code of Ethics, provides:

9 A Commissioner should disqualify himself or herself in a proceeding where  
10 that Commissioner determines that he or she cannot be impartial, such as  
11 when the Commissioner has a personal bias or prejudice concerning a party.  
12 *Commissioners should also not allow family, social, or other relationships*  
12 *to influence their official conduct or judgment.*

13 (Emphasis added). As shown below, the circumstances are present here to justify  
14 Commissioner Dunn’s recusing himself from further participation involving EPCOR Water  
15 Arizona, Inc. (“EPCOR”), the interim manager appointed in this docket.

## 16 **II. CLOSE RELATIONSHIP WITH EPCOR REPRESENTATIVE IS A** 17 **CONFLICT OF INTEREST**

18 The Company understands that attorney Garry Hays and Commissioner Dunn have  
19 had a close personal and advisory relationship for many years. This relationship began as  
20 early as 2008, when Mr. Hays and Commissioner Dunn served together on the City of  
21 Chandler’s Green Building Program while the latter was mayor. The Company also  
22 understands that Mr. Hays was a trusted advisor and strategist to Commissioner Dunn during  
23 his Corporation Commission campaign, and that Mr. Hays continues to advise Commissioner  
24 Dunn on an ongoing basis. For example, upon information and belief, Mr. Hays recently  
25 interceded with legal counsel who brought a complaint to remove Commissioner Dunn from  
26 the 2020 Republican Primary ballot in an attempt to persuade counsel to not proceed with  
27 litigation.  
28

1 The Company also understands that Mr. Hays performs consulting services for  
2 EPCOR and was extensively involved in the contentious eminent domain matter brought  
3 against EPCOR by the City of Bullhead City in Mohave County.

4 The Company is concerned that Commissioner Dunn's relationship with EPCOR,  
5 through Mr. Hays, is affecting his impartiality in this case and, in fact, has caused him to  
6 prejudge it.

7 Indeed, at the recent June 10, 2020 Open Meeting, Commissioner Dunn's  
8 prejudgment of this case was clear. There, Commissioner Dunn openly suggested that the  
9 yet-to-be-discussed-or-approved Proposed Order that will be discussed at the Special Open  
10 Meeting on June 22, 2020 should include a "seven day" deadline for Johnson Utilities to  
11 submit a financing application for the proposed \$20 million project to which that Order is  
12 intended to be directed. Not only is such a suggestion premised on the Commission's  
13 presupposed approval of the Proposed Order, but it is axiomatic that such a short deadline  
14 would not provide the Company with sufficient time to exhaust administrative remedies,  
15 much less raise any issues on appeal.

16 Johnson Utilities has demonstrated that there are alternatives to this project that the  
17 Arizona Department of Environmental Quality ("ADEQ") agrees would bring compliance 1)  
18 faster and 2) less expensively to its rate paying customers. But rather than acknowledge the  
19 jurisdiction of ADEQ with regard to these sorts of technical compliance matters and giving  
20 weight to its findings, Commissioner Dunn appears to be advocating the EPCOR agenda of  
21 forcing the Company to expend tens of millions on a project that is not yet necessary or  
22 warranted at this time to achieve compliance.

23 Commissioner Dunn also contended at the June 10, 2020 Open Meeting that the  
24 Commission should discuss – *at the same time the proposed Order will be discussed* – how  
25 the ACC will address contempt in the event the Company fails to abide by this yet-to-be-  
26 discussed-or-approved Proposed Order.

27 Commissioner Dunn is a member of the State Bar of Arizona. He has served as a  
28 Superior Court Judge. Most certainly, he understands due process and his role as an  
impartial, neutral fact finder. He understands that the Company should have the



1 Constitutional right to be heard before a \$20 million order is entered against it. But the  
2 actions of Commissioner Dunn, due to his close relationship with EPCOR through Mr. Hays,  
3 demonstrate otherwise. And for this reason, Commissioner Dunn should recuse himself  
4 voluntarily.

### 5 **III. CONCLUSION**

6 The Company does not take the Commission's ethical rules lightly, and it does not  
7 bring attention to these issues to cause delay or for any other reason. It simply wants  
8 precisely what the Constitution provides: fairness. Fairness before a \$20 million order is  
9 entered against it.

10 For the foregoing reasons, Johnson Utilities respectfully asks Commissioner Dunn to  
11 voluntary recuse himself from discussing or voting on the Proposed Order to be considered  
12 at the June 22, 2020 Special Open Meeting.

13 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of June, 2020.

14 **FREDENBERG BEAMS**

15 By: /s/ Daniel E. Fredenberg  
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19 ORIGINAL filed with Docket Control via  
20 e-File this 19<sup>th</sup> day of June, 2020.

21 COPIES of the foregoing e-mailed or mailed  
22 this 19<sup>th</sup> day of June, 2020, to:

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